

Department of the Army, DoD

§518.11

Army. Examples of manuals and instructions not normally made available are:

(i) Those issued for audit, investigation, and inspection purposes, or those that prescribe operational tactics, standards of performance, or criteria for defense, prosecution, or settlement of cases; and

(ii) Operations and maintenance manuals and technical information concerning munitions, equipment, systems, and intelligence activities.

(4) *(a)(2)(D) records.* Those 5 U.S.C. 552(a)(3) records, which because of the nature of the subject matter, have become or are likely to become the subject of subsequent requests for substantially the same records. These records are referred to as FOIA-processed (a)(2) records.

(i) Army Activities shall decide on a case by case basis whether records fall into this category, based on previous experience of the Army Activity with similar records; particular circumstances of the records involved, including their nature and the type of information contained in them; or the identity and number of requesters and whether there is widespread press, historic, or commercial interest in the records.

(ii) This provision is intended for situations where public access in a timely manner is important, and it is not intended to apply where there may be a limited number of requests over a short period of time from a few requesters. Army Activities may remove the records from this access medium when the appropriate officials determine that access is no longer necessary.

(iii) Should a requester submit a FOIA request for FOIA-processed (a)(2) records, and insist that the request be processed, Army Activities shall process the FOIA request. However, Army Activities have no obligation to process a FOIA request for 5 U.S.C. 552(a)(2)(A), (B), and (C) records because these records are required to be made public and not FOIA-processed under paragraph (a)(3) of the FOIA.

§518.10 “(a)(2)” materials.

(a) The DA FOIA/PA Office shall maintain in the facility an index of materials described in paragraphs (b)(1)

through (4) of §518.9, that are issued, adopted, or promulgated after July 4, 1967. No “(a)(2)” materials issued, promulgated, or adopted after July 4, 1967 that are not indexed and either made available or published may be relied upon, used or cited as precedent against any individual unless such individual has actual and timely notice of the contents of such materials. Such materials issued, promulgated, or adopted before July 4, 1967 need not be indexed, but must be made available upon request if not exempted under this part.

(b) The DA FOIA/PA Office shall promptly publish quarterly or more frequently, and distribute, by sale or otherwise, copies of each index of “(a)(2)” materials or supplements thereto unless it publishes in the FEDERAL REGISTER an order containing a determination that publication is unnecessary and impracticable. A copy of each index or supplement not published shall be provided to a requester at a cost not to exceed the direct cost of duplication as set forth in subpart F of this part.

(c) Each index of “(a)(2)” materials or supplement thereto shall be arranged topically or by descriptive words rather than by case name or numbering system so that members of the public can readily locate material. Case name and numbering arrangements, however, may also be included for Army convenience.

(d) A general index of FOIA-processed (a)(2) records shall be made available to the public, both in hard copy and electronically.

§518.11 Other materials.

(a) Any available index of Army material published in the FEDERAL REGISTER, such as material required to be published by section 552(a)(1) of the FOIA, shall be made available in the Army FOIA Public Reading Room, and electronically to the public.

(b) Although not required to be made available in response to FOIA requests or made available in FOIA Reading Rooms, “(a)(1)” materials shall, when feasible, be made available to the public in FOIA reading rooms for inspection and copying, and by electronic means. Examples of “(a)(1)” materials